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Beverly Smith

CLERK

of the supreme court,
court of appeals and
tax court

FRIEDLANDER, Judge

Genard Richmond was convicted of Possession of Cocaine or a Narcotic Drug,¹ a class D felony, and Unauthorized Entry of A Motorized Vehicle,² a class B misdemeanor. Richmond challenges the drug conviction on grounds that the trial court erred in admitting cocaine into evidence over his chain-of-custody objection.

We affirm.

The facts favorable to the convictions are that on January 27, 2008, Officer Douglas Weaver of the Fort Wayne Police Department observed a maroon 1996 Buick that matched the description of a vehicle reported stolen. The vehicle was traveling on Fairfield Avenue in Fort Wayne. Officer Weaver verified that the car was stolen before initiating a traffic stop, along with Officer Ben Miller and one other officer. Richmond was ordered out of the vehicle and complied. Officer Miller placed Richmond in handcuffs and searched him. In the left front pocket of Richmond's jeans, Officer Miller felt a large object and removed it. He discovered the "object" was actually "an unusual amount of light papers – looked like receipts, business cards, just – looked like almost like trash[.]" *Transcript* at 102. He placed the wad of objects into a property bag along with several other objects found on Richmond's person and then placed Richmond in the back seat of Officer Weaver's car. Officer Miller gave the still-unsealed property bag to Weaver, who transported Richmond and the bag to the Allen County Jail.

When he arrived at the jail at 11:22 p.m., Officer Weaver placed Richmond's personal

¹ Ind. Code Ann. § 35-48-4-6 (West, PREMISE through 2008 2nd Regular Sess.).

² Ind. Code Ann. § 35-43-4-2.7 (West, PREMISE through 2008 2nd Regular Sess.).

belongings, including the property bag, on a counter marked by tape designating it as the spot to place detainees' personal effects. At 12:05 a.m., Sergeant Sean Kelly of the Allen County Sheriff's Office began to inventory Richmond's possessions. In the property bag, he observed what looked like "a lot of papers, trash, things of that nature." *Id.* at 120. Sergeant Kelly, in Richmond's presence, emptied the bag on the counter and began to sift through its contents. He discovered a small, clear plastic baggie containing a white, rock-like substance that he believed to be crack cocaine. He asked Richmond, "What's this?" *Id.* at 133. Richmond responded, "Nothing. Don't worry about it. Throw it away." *Id.* Sergeant Kelly telephoned Officer Miller immediately, at approximately 12:05 a.m., and told him about his discovery. Officer Miller drove to the jail and took possession of the baggie, which Sergeant Kelly handed to Officer Miller. Officer Miller then drove from the county jail to the police station, weighed the baggie and its contents, sealed the baggie in a plastic evidence bag, and placed it into evidence. Subsequent testing revealed that the substance in the baggie tested positive for cocaine and weighed .25 grams.

Richmond was charged with possession of cocaine or a narcotic drug as a class D felony and unauthorized entry of a motorized vehicle as a class B misdemeanor. He was convicted as charged on both counts following a bench trial.

Richmond challenges his conviction of cocaine possession on grounds that the cocaine purportedly found on his person was inadmissible in evidence because it lacked sufficient chain of custody. In order to establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition. *Troxell v.*

State, 778 N.E.2d 811 (Ind. 2002). The State, however, does not need to establish a perfect chain of custody; once the State “strongly suggests” the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to its admissibility. *Id.* at 814. There is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties. *Troxell v. State*, 778 N.E.2d 811. The State need not exclude all possibility of tampering, and merely raising the possibility of tampering is an insufficient method of challenging the chain of custody. *Whaley v. State*, 843 N.E.2d 1 (Ind. Ct. App. 2006), *trans. denied*.

In the instant case, Officer Weaver testified that he emptied the contents of Richmond’s pockets into a property bag and transported the bag, along with Richmond, to the Allen County Jail. The property bag was placed in a specially designated area on a counter in the jail’s processing room. The entire room, including the counter, was under video surveillance. Almost immediately, Sergeant Kelly emptied the property bag and discovered the baggie containing cocaine in the midst of what essentially appeared to be a wad of trash. When asked about the baggie, Richmond instructed the sergeant not to worry about it and to throw it away. Officer Miller was summoned and arrived a short time later. Sergeant Kelly handed the baggie to Officer Miller, who drove straight to the police station and sealed the baggie in an evidence bag. Richmond’s chain-of-custody challenge does not involve the time after the baggie was sealed in an evidence bag. Rather, Richmond contends the evidence offered by the State does not sufficiently negate the possibility that (1) the cocaine was already in the plastic bag when the contents of his pockets were placed in the bag at the scene

of the arrest, or (2) the cocaine was placed in the bag while it was on the counter at the jail before Sergeant Kelly sifted through its contents. We disagree.

We summarize here the totality of the evidence on the subject of chain of custody: (1) The items found on Richmond's person were transferred by law enforcement personnel directly from Richmond's pockets into a property bag, (2) which was then taken directly to the jail and deposited in a secure area, (3) where a short time later the property bag was emptied and the contents inspected by another law enforcement official, who discovered a baggie that was small enough to have plausibly escaped detection when taken from Richmond's pocket at the scene, (4) after which, that officer hand-delivered the baggie to another officer, who immediately drove it to a police station and sealed it in an evidence bag.

We conclude that with this evidence, the State gave reasonable assurances that the cocaine passed through the parties' hands in an undisturbed condition. *See Bussberg v. State*, 827 N.E.2d 37 (Ind. Ct. App. 2005), *trans. denied*. Therefore, the trial court did not abuse its discretion by admitting the evidence.

We note as a final matter that the parties offered argument on the question of the sufficiency of the evidence supporting Richmond's drug conviction. Richmond's prospects for success on this issue are entirely dependent on succeeding in his argument that the cocaine should not have been admitted into evidence. That is, he claims that without considering the cocaine found on his person, the evidence was not sufficient to prove he possessed cocaine. Having concluded that the cocaine was properly admitted into evidence, we therefore also conclude that the evidence was sufficient to support his conviction for

possession of cocaine.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur